

law or American law, except where American law directs.

In the *Leal* case, foreign law should not have been used to resolve the case because American law did not direct that foreign law apply.

When Justice Kagan appeared for her confirmation hearing, she stated that in deciding cases, “you’re looking at law all the way down, not your political preferences, not your personal preferences.”

However, the law in the *Leal* case is clear. Executive branch policy arguments and unenacted bills are not law.

I am not saying the Solicitor General or these Justices who dissented lied at their confirmation hearings or made a mockery of the confirmation process, but Judiciary Committee members foresaw cases such as *Leal* and asked the nominees to address the role of foreign law in constitutional cases. I believe, although they do not, what these individuals wrote in the *Leal* case is inconsistent with what they said at the time of their confirmation hearings.

Finally, one of these issues could arise again in a different legal context. Like the death penalty cases, there is ongoing litigation challenging the constitutionality of the Defense of Marriage Act. Like the death penalty cases, the Defense of Marriage Act is the subject of a bill. The particular bill—called the Respect for Marriage Act—notwithstanding its Orwellian name, would repeal the Defense of Marriage Act.

The Department of Justice has already decided not only to defend the Defense of Marriage Act but now argues the Defense of Marriage Act is unconstitutional. The Department, in light of its *Leal* brief, may be considering making the implausible argument the courts should strike down the Defense of Marriage Act simply because a bill has been introduced to repeal it—the same argument used in the *Leal* case before the Supreme Court.

You might well argue the introduction of a bill that is strongly supported by the administration is enough to lead courts to believe the Congress has already repealed the law anyway, so why not have the Court simply declare the law unconstitutional. The Department should not make such an argument, and I can tell the courts that, like the bill to make the Vienna Convention apply retroactively to convicted criminal defendants who face the death penalty, this Congress will not—and I repeat, will not—pass the Respect for Marriage Act and courts should not consider its introduction in resolving *DOMA*’s constitutionality.

Mr. President, obviously, I am disappointed the Obama administration has advanced policy arguments rather than legal arguments in the Supreme Court. How ridiculous it is to try to convince the Supreme Court that just because a bill is introduced they ought to make a decision based upon that bill being introduced.

In the absence of arguments based on American law, it should not have asked

the Court to rule based on policy. Rather, it should have either argued based on American law—even if American law did not conform to its view of desirable policy—or it should have declined to participate in the case.

I am also disappointed that four Supreme Court Justices voted to advance their views of policy rather than law, which is the essence of judicial activism. We were—or you could say we are—only one vote away from a Supreme Court majority that would have applied policy preferences in favor of international law rather than American constitutional law. We were only one vote away from a Supreme Court majority that would have usurped the separation of powers by considering a bill to be the same as a law that Congress passed. And we were only one vote away from a Supreme Court majority that would have applied the ruling of an international tribunal over which Americans have no say rather than a body—as in this Congress of the United States—that is representative of and answers only to the American people.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BLUMENTHAL). Without objection, it is so ordered.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators allowed to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

HONORING OUR ARMED FORCES

SPECIALIST NICHOLAS P. BERNIER

Mrs. SHAHEEN. Mr. President, I rise today with deep sadness to pay tribute to the service and sacrifice of Army SPC Nicholas P. Bernier, who died on June 25, 2011, from injuries sustained during combat in Kherwar, Afghanistan, while supporting Operation Enduring Freedom. Specialist Bernier was a combat medic with Headquarters, Headquarters Company, 2nd Battalion, 30th Infantry Regiment, 4th Brigade Combat Team, 10th Mountain Division based out of Fort Polk, LA.

A native of East Kingston, NH, and 2007 graduate of Exeter High School, Nicholas or Nick, as he was called by those who knew him, enlisted in the U.S. Army shortly after graduation. Prior to his deployment to Afghanistan in October 2010, Nick provided medical care in Texas to wounded soldiers who had returned from overseas.

From a very young age, Nick stood out in his tight-knit community for his desire to help others. It was, therefore, no surprise to his friends and family when he answered the call to serve his country, to protect his fellow Americans, and to care for his brothers in arms as a medic on the frontlines in Afghanistan. This last assignment was, in fact, a natural fit for him.

Our Nation can never adequately thank Nick for his willingness to serve and to make the ultimate sacrifice defending the freedoms we hold dear. While words provide little comfort at such a time as this, I hope Nick’s family will find some solace in the deep appreciation all Americans share for Nick, for the life he lived and for the ultimate sacrifice he made in the service of others. He was a true American hero.

Nick is survived by his parents, Paul Bernier of East Kingston, NH, and Tina Clements of Haverhill, MA; two brothers, Bradley and Christopher, and half-sister, Brittany. He also leaves behind a caring extended family and a community that loved him.

I ask my colleagues and all Americans to join me in honoring the life, service, and sacrifice of SPC Nicholas P. Bernier.

ADDITIONAL STATEMENTS

TRIBUTE TO ASSISTANT SECRETARY INES R. TRIAY

• Mrs. MURRAY. Mr. President, it is with great privilege that today I honor and express my thanks to Dr. Inés Triay, Assistant Secretary for Environmental Management at the Department of Energy for her service to our country.

The Environmental Management Program at DOE has consistently been a priority for me during my tenure in the Senate, as Washington State is home to the Hanford Nuclear Reservation. As a part of the Manhattan Project, Hanford produced plutonium from 1944 until 1987, and the efforts of Hanford workers and the Tri-Cities community helped end World War II.

Today, under the leadership of Dr. Triay, Hanford workers are involved in an environmental cleanup project of enormous scale necessitated by the processes required to transform raw uranium into plutonium for bombs. These processes generated billions of gallons of liquid waste and millions of tons of solid waste which must now be cleaned up, removed, or remediated. Dr. Triay and her staff have worked closely with both the Richland Operations Office and the Office of River Protection to ensure cleanup efforts at Hanford continue to move forward in a meaningful and timely fashion.

Inés has devoted her career to the safe and timely cleanup of radioactive waste and facilities from our Nation’s Cold War nuclear weapon production and research sites. Inés, a Cuban-born